

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Ramon Carter,

Plaintiff,

v.

G & M GAPCO, LLC, a California
Limited Liability Company;
G&M Oil Co., LLC, a California
Limited Liability Company; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Ramon Carter complains of Defendants G & M GAPCO, LLC, a California Limited Liability Company; G&M Oil Co., LLC, a California Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property

1 owners, business operators, lessors and/or lessees for the Chevron gas station
2 ("Chevron") located at or about 1212 West Foothill Blvd., Upland, California.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 4. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California's Unruh Civil Rights Act,
21 which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 7. The Plaintiff went to Chevron in September of 2014, to get gasoline.

28 8. Chevron is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 9. Paths of travel are one of the facilities, privileges and advantages
3 offered by defendants to their customers at Chevron.

4 10. Unfortunately, there is no way for plaintiff to get inside the
5 convenience store at Chevron because of steps that wrap around the entire
6 building. As such, plaintiff is precluded from entering the business to either
7 pay or to get snacks and drinks inside.

8 11. The plaintiff personally encountered this problem. This inaccessible
9 parking lot denied the plaintiff full and equal access and caused him
10 difficulty.

11 12. Plaintiff would like to return and patronize Chevron but will be
12 deterred from visiting until the defendants cure the violation. Plaintiff lives in
13 San Bernardino County and shops and travels within the County on a regular
14 basis. He would like to return.

15 13. Additionally, and even though the plaintiff did not personally confront
16 these barriers, the sales floor is not accessible to wheelchair users. Although
17 there are shelves and merchandise aisles open to customers for shopping, the
18 path of travel in and throughout these merchandise aisles is not accessible to
19 wheelchair users because of the configuration of the store and also because
20 the defendants have a practice of placing merchandise and merchandise
21 display on the route of travel restricting passage to far less than 36 inches in
22 width.

23 14. The restroom, meanwhile, is not accessible to wheelchair users.

24 15. The restroom doorway clear passage width was 29 inches and
25 inaccessible to wheelchair users.

26 16. The restroom door required greater than 5 lbs of pressure to open. In
27 fact, it requires about 20 lbs of pressure to open. The defendants have not
28 adopted or followed a practice or procedure sufficient to maintain and ensure

1 that the restroom door is accessible to wheelchair users.

2 17. Finally, there is no clear floor space in front of the disposable toilet seat
3 cover dispenser because it is mounted on the wall behind the toilet.

4 18. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 19. Given the obvious and blatant violations, the plaintiff alleges, on
8 information and belief, that there are other violations and barriers on the site
9 that relate to his disability. Plaintiff will amend the complaint, to provide
10 proper notice regarding the scope of this lawsuit, once he conducts a site
11 inspection. However, please be on notice that the plaintiff seeks to have all
12 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
13 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
14 he can sue to have all barriers that relate to his disability removed regardless
15 of whether he personally encountered them).

16 20. Additionally, on information and belief, the plaintiff alleges that the
17 failure to remove these barriers was intentional because: (1) these particular
18 barriers are intuitive and obvious; (2) the defendants exercised control and
19 dominion over the conditions at this location and, therefore, the lack of
20 accessible facilities was not an "accident" because had the defendants
21 intended any other configuration, they had the means and ability to make the
22 change.

23
24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
25 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
26 defendants (42 U.S.C. section 12101, et seq.)

27 21. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 22. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods and services of any
4 place of public accommodation is offered on a full and equal basis by anyone
5 who owns, leases, or operates a place of public accommodation. See 42
6 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
16 Appendix “D.”
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to
21 the maximum extent feasible, the path of travel to the altered
22 area and the bathrooms, telephones, and drinking fountains
23 serving the altered area, are readily accessible to and usable by
24 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

25 23. There must be an accessible path of travel that connects all buildings,
26 elements and spaces on the same site. 1991 Standards § 4.3.2. To be
27 considered an accessible route, there cannot be a stair or step. 1991
28 Standards § 4.3.8. Any such change in level measuring greater than ½ inch

1 must have a ramp or lift. *Id.* 2010 Standards § 303.4.

2 24. Here, the unramped step is a violation of the ADA.

3 25. Shelves and display units allowing self-service by customers at stores
4 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
5 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

6 26. Here, the failure to provide accessible paths of travel in and throughout
7 the merchandise aisles is a violation of the law.

8 27. All doors to restrooms must have a minimum clear opening of 32
9 inches with the door open 90 degrees, measured between the face of the door
10 and the opposite stop. 1991 Standards § 4.22.2; 4.13.5; 2010 Standards §
11 404.2.3.

12 28. Here, the failure to provide the 32 inch wide restroom doorway
13 opening is a violation of the ADA.

14 29. Clear floor space that allows a forward or a parallel approach by a
15 person using a wheelchair shall be provided at controls, dispensers,
16 receptacles, and other operable equipment. 1991 Standards § 4.27.2; 2010
17 Standards § 309.2.

18 30. Here, the failure to provide such floor space is a violation of the law.

19 31. The force required for pushing or pulling open an interior door shall
20 not exceed 5lbf. 1991 Standards § 4.13.11.

21 32. Here, the force was well in excess of 5 lbs.

22 33. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 34. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 35. Given its location and options, Chevron is a business that the plaintiff
28 will continue to desire to patronize but he has been and will continue to be

1 discriminated against due to the lack of accessible facilities and, therefore,
2 seeks injunctive relief to remove the barriers.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
6 51-53)

7 36. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 37. Because the defendants violated the plaintiffs' rights under the ADA,
11 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
12 Code § 51(f), 52(a).)

13 38. Because the violation of the Unruh Civil Rights Act resulted in
14 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
15 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
16 55.56(a)-(c).)

17
18 **PRAYER:**

19 Wherefore, Plaintiff prays that this court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 Plaintiffs are not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act which damages provide for
26 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3
4 Dated: March 19, 2015

CENTER FOR DISABILITY ACCESS

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6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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